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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/656,948	09/08/2003	Kailash C. Vasudeva	PAT 51403A-2	9002

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EXAMINER

RODRIGUEZ, RUTH C

ART UNIT	PAPER NUMBER
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3677

DATE MAILED: 06/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/656,948	Applicant(s) VASUDEVA, KAILASH C.	
	Examiner Ruth C. Rodriguez	Art Unit 3677	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 March 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 32-71 is/are pending in the application.
- 4a) Of the above claim(s) 41, 42, 44-46 and 60-71 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 32-40, 43 and 47-59 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>12/22/05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election Restriction

1. Claims 41, 42, 44-46 and 60-71 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 25 April 2004.

Information Disclosure Statement

2. The information disclosure statement filed 22 December 2005 has been considered for this Office Action.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 32-40, 43 and 47-59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thompson (US 6,299,216) in view of Medvick (US 4,792,162).

Thompson discloses an elongated substantially flat exhaust flange comprises a first part (5a or 5b) and a second part (9,15,18). The first part has a receiving surface (recess or protrusion on inner surface of 5a or 5b) and a pipe attachment means (outer surface of the flange 5a or 5b) arranged on a pipe attachment surface opposite to the receiving surface (Figs. 4, 5, 6A, 6b, 7 and 11). The receiving surface has means for mating with the second part (Figs. 4, 5, 6A, 6b, 7 and 11). At least one of the first or second parts is made of powder metallurgically produced material. Thompson fails to disclose that at least one of the first or second parts is made of powder metallurgically produced material. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the first and second flanges made of powder metallurgically produced material since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416. Especially, since Medvick teaches that the flanges are made of powder metallurgically produced material that offers significant reduction in the manufacturing costs and provides a durable structure (C. 7, L. 25-31).

Thompson also discloses that:

Means for mating with the second part is a cavity or a protrusion (Figs. 4, 5, 6A, 6B, 7 and 11).

The first part is a substantially flat backing plate (5a or 5b) and the second part is an annular sealing part (18). The first part has a backing plate recess (recess in 5a or 5b for the gasket) and the second part has a sealing part recess (recess between 18 and 18b). The backing plate recess and the sealing part recess have complementary shapes so that the backing plate recess mates in the sealing part recess (Fig. 6B).

The backing plate recess is a central through hole (middle of 5a or 5b).

The backing plate recess is stepped (steps at inner surface of 5a or 5b).

The sealing part recess is stepped (steps at gasket 18).

The flange has bolt mounting holes arranged to receive threaded bolts onto which nuts are threadable (Figs. 4, 5, 6A, 6B, 7 and 11).

The second part is a gasket (9,15,18).

The first flange has an annular gasket recess (recess at inner surface of 5a or 5b) for the gasket arranged on the receiving surface of the flange.

The annular gasket recess has gasket retaining means (edges of any of the gaskets).

The gasket retaining means comprises gasket recess protrusions (edges of any of the gaskets).

The gasket retaining means are generally oval (Figs. 4, 5, 6A, 6B, 7 and 11).

Regarding claims 48 and 49, a comparison of the recited process with the prior art doe NOT serve to resolve the issue concerning patentability of the product. In re Fessman , 489 F2d 742, 180 U.S.P.Q. 326 (CCPA 1974). Whether the product is patentable depends on whether it is known in the art or it is obvious and is not governed

by whether the process by which it is made is patentable. In re Klug, 333 F2d 905 142 U.S.P.Q. 161 (CCPA 1964). In an ex parte case, product-by-process claim are not construed as being limited to the product formed by the specific process recited. In re Hirao et al. 535 F2d 67, 190 U.S.P.Q. 15, (CCPA 1976).

Medvick teaches that any of the first part (5a), the second part (5b) or both parts can be made of a powder metallurgically produced material.

Thompson discloses an exhaust flange assembly comprises a male flange (5b) and a female flange (5a). The male flange includes a first part (5b) and a second part (9,15,18). The first part has a receiving surface (inner surface of 5b) and a pipe attachment means (opposite surface of the flange 5b) arranged on a pipe attachment surface opposite to the receiving surface. The receiving surface has a cavity for receiving the second part (Figs. 4, 5, 6A, 6B, 7 and 11). The female flange includes a pipe attachment means (outer surface of the flange 5a) and a mating surface (inner surface of flange 5a). The pipe attachment means is arranged on a pipe attachment surface (outer surface of the flange 5). The mating surface complementarily mates with the male flange (Figs. 4 and 5). Thompson fails to disclose that at least one of the first or second parts is made of powder metallurgically produced material. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the first and second flanges made of powder metallurgically produced material since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416. Especially, since Medvick

teaches that the flanges are made of powder metallurgically produced material that offers significant reduction in the manufacturing costs and provides a durable structure (C. 7, L. 25-31).

The female flange and the male flange mate at at least one sealing surface (Figs. 4 and 5).

Response to Arguments

5. Applicant's arguments filed 30 March 2006 have been fully considered but they are not persuasive.

6. The Applicant argues that Thompson and Medvick fails to disclose a two-piece exhaust flange. This argument fails to persuade. Regarding claim 32 and 58, the claims only requires two parts for the exhaust flange. Thompson clearly discloses two parts as can be seen in Figs. 4, 5, 6A, 6B, 7 and 11 where the flange comprises a gasket (9,15,18) as one of the parts and one of the flanges (5a,5b) as the other part. Therefore, Thompson meets the claim limitations.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Zimmer et al. (US 3,173,522), Metwick (US 4,792,162) and Kapgan et al. (US 5,662,362) are cited to show state of the art with respect to the use of powder metallurgically produced material for the flanges and different components of a joint. Van Winkle (US 3,220,246), Ahlstone (US 4,294,477), Hodonsky (US 5,662,361), Metsinger (US 6,079,752), Babuder et al. (US 6,234,545 B1), Thompson (US 6,299,216 B1) and Aaron, III (US 6,454,316 B1 and 6,543,120 B2) are cited to show state of the art with respect to flanges having some of the features being claimed by the current application.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ruth C Rodriguez whose telephone number is (571) 272-7070. The examiner can normally be reached on M-F 07:15 - 15:45.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on (571) 272-7075.

Submissions of your responses by facsimile transmission are encouraged. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-6640.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ruth C. Rodriguez
Patent Examiner
Art Unit 3677

rcr
June 12, 2006


ROBERT J. SANDY
PRIMARY EXAMINER